

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

BOYCE DESHAUN GRAVES,

Defendant-Appellant.

UNPUBLISHED

October 21, 2010

No. 293268

Wayne Circuit Court

LC No. 09-008656-FH

Before: MURRAY, P.J., and K.F. KELLY and DONOFRIO, JJ.

PER CURIAM.

Defendant appeals as of right his bench trial convictions for felon in possession of a firearm, MCL 750.224f, and possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b. Defendant was sentenced, as a fourth habitual offender, MCL 769.12, to five years' imprisonment for the felony-firearm conviction, and one to five years' imprisonment for the felon in possession conviction. We affirm.

Defendant first argues that (1) there was insufficient evidence to sustain his convictions and (2) the trial court's findings were insufficient. We disagree with both arguments. This Court reviews de novo a challenge to the sufficiency of evidence in a bench trial, viewing the evidence in a light most favorable to the prosecution. *People v Sherman-Huffman*, 241 Mich App 264, 265; 615 NW2d 776 (2000), aff'd 466 Mich 39 (2002). "[A] court must . . . determine whether any rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt." *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992). Nevertheless, "[t]his Court will not interfere with the trier of fact's role of determining the weight of the evidence or the credibility of witnesses. Circumstantial evidence and reasonable inferences that arise from such evidence can constitute satisfactory proof of the elements of the crime." *People v Passage*, 277 Mich App 175, 177; 743 NW2d 746 (2007).

Regarding felon in possession, "[u]nder MCL 750.224f, a person who has been convicted of a felony may not 'possess, use, transport, sell, purchase, carry, ship, receive, or distribute a firearm' unless certain conditions are met." *People v Dupree*, 284 Mich App 89, 102; 771 NW2d 470 (2009), aff'd in part 486 Mich 693 (2010). Therefore, to be guilty of this offense, a defendant must have a previous felony conviction and be in possession of a firearm. Because both sides stipulated that defendant had committed a prior felony, and was not eligible to possess a firearm, the only element in question is defendant's possession of the gun. Likewise, to be

guilty of felony-firearm, a defendant must possess a firearm during the commission of a felony. “The elements of felony-firearm are that the defendant possessed a firearm during the commission of, or the attempt to commit, a felony.” *People v Avant*, 235 Mich App 499, 505; 597 NW2d 864 (1999). As to this offense as well, the question of possession dictates defendant’s guilt or innocence.

Defendant’s specific argument is that no evidence existed to prove he had possession of a firearm, as his legal address was not the one where the gun was found, no officer ever saw defendant with the gun, and there is reasonable doubt regarding which man slept in the bedroom where the gun was found.

Possession may be actual or constructive. Our Supreme Court has held that for purposes of possession, “[a] defendant has constructive possession of a firearm if the location of the weapon is known and it is reasonably accessible to the defendant.” *People v Hill*, 433 Mich 464, 470-471; 446 NW2d 140 (1989). “[The] [d]efendant’s access to the weapon should not be determined solely by reference to his arrest.” *People v Williams*, 198 Mich App 537, 541; 499 NW2d 404 (1993), quoting *People v Becoats*, 181 Mich App 722, 726; 449 NW2d 687 (1989). Finally, “possession of a weapon is not the same thing as ownership of a weapon.” *People v Burgenmeyer*, 461 Mich 431, 438; 606 NW2d 645 (2000).

Here, there was sufficient evidence to support the conclusion that defendant had constructive possession of the weapon. The weapon was found in a dresser drawer, accompanied by court papers bearing defendant’s name. The dresser was in a bedroom with pictures of defendant. When Officer Talbert questioned defendant prior to searching the room, defendant told him that the room was his. Damila Smith told police that the room was hers, and that she had a relationship with defendant. Both men’s and women’s clothing and shoes were strewn about the bedroom, and Officer Talbert estimated that the male clothing would fit defendant. Although defendant was not holding the gun at the time of his arrest and made no attempt to retrieve the gun at that time, he was still in possession of the weapon. As the weapon was in an unlocked drawer, it was also reasonably accessible to him.

The trial court found credible the testimony of Officer Talbert regarding the gun and the court papers as well as his testimony that defendant admitted that he utilized the northeast bedroom. The officer’s testimony is sufficient to prove that defendant had constructive possession of a firearm. Therefore, there was sufficient evidence for a rational trier of fact to find defendant guilty beyond a reasonable doubt of felon in possession of a firearm and felony-firearm.

As noted earlier, defendant also argues that the trial court’s findings were insufficient because the trial court did not use the proper standard of proof and convicted him based on speculation.

MCR 2.517(A)(1) states, “In actions tried on the facts without a jury or with an advisory jury, the court shall find the facts specially, state separately its conclusions of law, and direct entry of the appropriate judgment.” See also MCR 6.403. “[F]actual findings are sufficient so long as it appears that the trial court was aware of the issues in the case and correctly applied the law.” *People v Armstrong*, 175 Mich App 181, 185; 437 NW2d 343 (1989).

In this case, the trial court placed detailed findings on the record, essentially recounting all of the testimony while also noting that the prosecution and defense stipulated that defendant was convicted of a felony and was not eligible to possess a weapon on March 28, 2009. The transcript and trial court's subsequent written order were more than sufficient to satisfy MCR 2.517(A)(1). The trial court's findings also show, as noted above, that the court was aware of the law on possession of a firearm.

Defendant also argues, however, that the trial court based its findings on "pure speculation," as indicated by its use of the word "if." However, defendant fails to consider the trial court's judgment in its entirety, as well as the whole sentence he references. After stating that defendant had possession of the weapon, the trial court stated:

[the gun] not being locked in any[] way shape or form, and in regard to the amount of time he may very well have been visiting that residence but the Court finds that that's immaterial as to whether or not he was visiting in the bedroom *if* he knew in fact that the handgun was there and he would have known by his presence in the [bedroom]. [Emphasis added.]

Thus, the findings that the trial court put on the record indicate that it was aware that it was necessary to find constructive possession of the weapon. Since the trial court's findings essentially recounted all of the evidence presented at trial, and such evidence was sufficient to prove defendant's guilt beyond a reasonable doubt, it is clear that the trial court correctly applied the law, and therefore, its findings were sufficient.

Defendant next argues he was improperly sentenced as a fourth habitual offender because his sentence was based on inaccurate information.¹ "This Court reviews a trial court's sentencing decisions for an abuse of discretion." *People v Sexton*, 250 Mich App 211, 227; 646 NW2d 875 (2002), citing *People v Cain*, 238 Mich App 95, 130; 605 NW2d 28 (1999). However, defendant failed to preserve the issue. "Therefore, a defendant pressing an unpreserved claim of error 'must show a plain error that affected substantial rights.'" *Id.* at 228, quoting *People v Carines*, 460 Mich 750, 774; 597 NW2d 130 (1999).

"The Due Process Clause of the Fourteenth Amendment mandates that a state's method for charging a crime give a defendant fair notice of the charge against the defendant, to permit the defendant to adequately prepare a defense." *People v Chapo*, 283 Mich App 360, 364; 770 NW2d 68 (2009). In addition, in order to uphold due process, sentences must be based on accurate information, and "[i]t is vitally important to the defendant and to the ends of justice that the sentence be based upon accurate information." *People v Malkowski*, 385 Mich 244, 249; 188 NW2d 559 (1971).

¹ While defendant's argument is premised on the fact that his sentencing was based on inaccurate "information" in the generic sense, the prosecutor points out that the Felony Information lists different convictions than the Presentence Investigation Report, and therefore, the accuracy of the Felony Information will also be addressed.

Defendant argues that, because he was sentenced based on two convictions for assault with intent to commit bodily harm stemming from the same incident, the information on which his sentence was based was inaccurate. Defendant argues that because of this inaccuracy his fourth-habitual offender sentence must be vacated. We disagree.

Defendant was sentenced on June 18, 2009, as a fourth habitual offender, based on two convictions of assault with intent to do great bodily harm, MCL 750.84, and one count of delivering/manufacturing marijuana, MCL 333.7401(2)(d)(3). While the Felony Information states that defendant was convicted of two counts of assault with intent to do great bodily harm on July 11, 2000, the Presentence Investigation Report only lists one of these convictions. However, as the prosecutor correctly argues, as shown by the register of actions from case number 00-002956-02-FC, defendant was convicted of two counts of assault with intent to do great bodily harm on July 11, 2000. Therefore, defendant was sentenced based on accurate information.

Defendant argues, however, that under *People v Preuss*, 436 Mich 714, 737; 461 NW2d 703 (1990), overruled by *People v Gardner*, 482 Mich 41; 753 NW2d 78 (2008), he cannot be sentenced as a fourth habitual offender unless his prior convictions arise from separate incidents or transactions. Defendant fails to realize that *Preuss* and *Stoudemire* were expressly overruled in 2008. In *Gardner*, the Supreme Court stated,

[w]e conclude that the holdings of *Stoudemire* and *Preuss* directly contradict the plain text of the [habitual offender] statutes. Therefore, we overrule these cases. The unambiguous statutory language directs courts to count each separate felony conviction that preceded the sentencing offense, not the number of criminal incidents resulting in felony convictions. [*Gardner*, 482 Mich at 44.]

Consequently, under *Gardner*, the Felony Information correctly listed each conviction of assault with intent to do great bodily harm as a separate felony conviction. Defendant therefore committed three felonies prior to the present charge. Since defendant's fourth-habitual offender sentence was based on this information, and this information is correct, defendant was properly sentenced as a fourth-habitual offender.

Affirmed.

/s/ Christopher M. Murray
/s/ Kirsten Frank Kelly
/s/ Pat M. Donofrio